

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

SAMUEL GOLDENBERG

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 1266

Decision No. CU - 2770

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, was presented by SAMUEL GOLDENBERG, and is based upon the asserted loss of \$821.13 sustained in connection with the ownership of a stock interest in Central Violeta Sugar Company, S. A. Claimant has been a national of the United States since his naturalization on June 12, 1906.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

The record contains an affidavit of William E. Conrad, General Services, Merrill Lynch, Pierce, Fenner & Smith, as well as correspondence from the claimant, disclosing that claimant, SAMUEL GOLDENBERG, purchased 50 shares of the capital stock of Central Violeta Sugar Company of Cuba on July 21, 1960, an additional 50 shares of stock of this Cuban enterprise on September 13, 1960, and on April 14, 1964, purchased 100 shares of stock of this Cuban firm; and that the 200 shares of Central Violeta Sugar Company capital stock are presently being held by this broker for the claimant's account. The broker has certified that the aforesaid shares are held for the claimant in bulk form, and that while claimant's ownership of shares of stock is reflected in the records of Merrill Lynch, Pierce, Fenner and Smith, no specific certificates have been assigned to claimant. On the basis of this evidence, the Commission finds that claimant owned, continuously from the date of loss to the presentation of this claim, 100 shares of the capital stock of Central Violeta Sugar Company; and that he acquired 100 shares on April 14, 1964.

The record further discloses that Central Violeta Sugar Company was nationalized by Cuban Law 890 published in the Cuban Official Gazette on October 13, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimant is entitled to file this claim based upon his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is most appropriate to the property

and equitable to the claimant. The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider, i.e., fair market value, book value, going concern value, or cost of replacement.

In determining the value of the interest owned by claimant in Central Violeta Sugar Company, S.A., the Commission has considered claimant's assertions and the purchase price of the stock, a 1959 consolidated balance sheet for the company, as published in Moody's Industrial Manual for 1961 (p.2029), as well as other data pertaining to the sales price of the stock.

In the absence of other evidence, the Commission concludes that the book value is the most appropriate basis of valuation.

The Commission therefore finds that a net book value of \$8,612,828.00 was available for distribution, at the time of loss, among the 283,020 shares of capital stock issued by Central Violeta Sugar Company, S.A., and concludes that the dollar loss sustained in connection with the ownership of a capital stock interest in Central Violeta Sugar Company, S.A., was \$30.4318 per share of the capital stock issued and held at the time of loss. (See Claim of Huntley E. Cox, Claim No. CU-2944.)

Accordingly, in the instant claim, the Commission finds that claimant, SAMUEL GOLDENBERG, as holder of 100 shares of capital stock of the Central Violeta Sugar Company, S.A., at the time of the nationalization, suffered a loss in the amount of \$3,043.18 within the meaning of Title V of the Act, as a result of said nationalization of this business enterprise by the Government of Cuba on October 13, 1960.

This leaves for determination the portion of the claim asserted by claimant for loss of 100 shares of Central Violeta Sugar Company capital stock, which were purchased by claimant on April 14, 1964.

Under Section 504 of the Act, as to ownership of property at time of loss or as to ownership of claims at time of filing claim with this Commission, it is provided

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

On the basis of evidence of record, the Commission finds that claimant acquired 100 shares of Central Violeta Sugar Company common stock by purchase on April 14, 1964; and that the claimant paid \$207.00 to purchase this stock interest which is being held by claimant's broker in his account.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. As discussed above, the loss occurred on October 13, 1960. Claimant has been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded

that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571).

The Commission finds that claimant, upon his purchase of the 100 shares of Central Violeta Sugar Company stock on April 14, 1964, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the amount of \$207.00 for these shares (the price he paid) as a result of the nationalization of the Cuban firm on October 13, 1960.

It will be noted that the total amount of loss found herein is in excess of the claimed amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644.)

The Commission therefore concludes that the amount of loss sustained by claimant herein as to the shares purchased subsequent to the date of loss shall be increased by interest thereon at the rate of 6% per annum from April 14, 1965, the date on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof. Claimant is therefore entitled to interest as follows:

on	\$3,043.18	from	October 13, 1960; and
on	<u>207.00</u>	from	April 14, 1964
	\$3,250.18	(total)	

CERTIFICATION OF LOSS

The Commission certifies that SAMUEL GOLDENBERG suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Thousand Two Hundred Fifty Dollars and Eighteen Cents (\$3,250.18) with interest thereon at 6% per annum from the aforesaid dates to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

AUG 14 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodoro Jaffe*

Theodoro Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)